

COMPLIANCE BOARD OPINION NO. 00-2
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April 10, 2000

Mr. Charles W. Jagoe

The Open Meetings Compliance Board has considered your complaint that the Mayor and Town Commissioners of Elkton violated the Open Meetings Act in connection with two meetings, one on March 8, 2000, and the other on January 28, 2000. For the reasons set forth below, the Compliance Board concludes that the procedural requirements of the Act were not properly followed in connection with the March 8 meeting.

I

Complaint and Response

Your complaint pointed out that on March 7, officers from the Elkton Police Department had begun to collect signatures on a petition to provide collective bargaining rights to police employees. According to your letter, the town attorney “told officers that he opposed the move to grant collective bargaining, and stated that he was having a meeting with the Mayor and Town Commissioners on March 8, 2000, to discuss collective bargaining.” A newspaper report the next day indicated that two closed meetings had been held the previous night: “The first was to interview a candidate of the position of police chief. The second was to meet with the town’s attorney . . . about collective bargaining in the police department.” Your complaint indicated that, although a closed meeting on these matters might have been legally permissible, the procedural requirements of the Open Meetings Act had not been satisfied.

Your complaint also indicated your awareness “that a secret meeting of the Mayor, Town Administrator and Town Commissioners took place on [January] 28, 2000, to discuss the termination of the Chief of Police....” Again, your complaint suggested that the Act’s procedural requirements were not satisfied in connection with this meeting.

In a timely response on behalf of the Town of Elkton, Mr. Lewis H. George, Jr. the Town Administrator, denied that the Act had been violated. Mr. George stated that no meeting at all had been held on January 28, 2000.

With respect to the March 8, 2000 meeting, Mr. George confirmed that the Town held a closed meeting “for two purposes: 1) to interview a possible employment candidate and 2) to meet with counsel for the purpose of seeking legal advice....” In a subsequent letter responding to the Compliance Board’s request for the written statement prepared at the time that the meeting was closed, Mr. George elaborated on the circumstances as follows:

This closed meeting, as I recall, evolved after the Mayor and the Commissioners’ regularly scheduled meeting on March 1 (two regularly scheduled open meetings were in March, on the 1st and 15th), consequently a public record of the closed meeting would be included in the minutes of the March 15 meeting, scheduled for approval at the next regularly scheduled meeting on April 5.

Generally, a Motion For A Closed Meeting would be completed by a member of the Board, which indicates the date of the closed meeting, the maker of the motion, the reason[s] for the meeting, the ayes, nays and abstentions regarding the motion, when the open meeting was closed and the time for reconvening the open meeting. In this instance, since the closed meeting was not scheduled and not within the immediate knowledge of the Board while the open meeting was being conducted on March 1, no form was completed at that time. A form should have been completed and announced as part of the public record at the March 15 open meeting, but was inadvertently overlooked. A form will be completed at the next open meeting scheduled for April 5, 2000 along with an announcement that a closed meeting was held on March 8.

II

Analysis

The Open Meetings Act allows a public body to close a session in order to consider a specific personnel matter or to obtain advice from its legal counsel. §10-508(a)(1) and (7) of the State Government Article. Based on the description of the March 8 meeting in Mr. George's response and the newspaper account, it appears to the Compliance Board that the Mayor and Commissioners had a proper basis under the law to close the meeting.

When, however, a public body relies on an exception in §10-508 to close a meeting, it must follow certain procedures. First, it must conduct a vote on the motion to close the meeting in open session. §10-508(d)(1) and (2)(i). Second, the presiding officer must prepare a written statement containing "the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." §10-508(d)(2)(ii). This written statement "shall be a matter of public record." §10-508(d)(4). Finally, those members of the public who attend the open session at which the vote to close occurs may lodge an objection to the closing of the session. §10-508(d)(3).¹

The Mayor and Commissioners evidently did not adhere to these requirements on March 8. Moreover, the Act does not permit any variance in the timing of the vote or the written statement. That is, the vote is to be taken and the written statement prepared just prior to the closing of the session. This timing ensures that those who participate in a closed session are accountable for the decision to close. Therefore, the Act would not have permitted the Mayor and Commissioners to vote on March 1 to close a meeting to be held on March 8. Nor is the requirement of the Act satisfied by having the statement concerning the March 8 closed meeting completed at the April 5 meeting.

¹ The public body may proceed with its closed session over objection, but if an objection is lodged, "the public body shall send a copy of the [required] written statement ... to the [Compliance] Board." §10-508(d)(3).

III

Conclusion

The Open Meetings Compliance Board finds that the Mayor and Commissioners of Elkton violated the Open Meetings Act by failing to adhere to the Act's procedural requirements when closing the meeting on March 8.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.

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